

Permitting & Assistance Branch Staff Report

Revised Solid Waste Facilities Permit for the

Newby Island Sanitary Landfill

SWIS No. 43-AN-0003

January 30, 2015

Background Information, Analysis, and Findings:

This report was developed in response to the City of San Jose, Department of Planning, Building, and Code Enforcement, Local Enforcement Agency's (LEA) request for the Department of Resources Recycling and Recovery (Department) concurrence on the issuance of a proposed revised Solid Waste Facilities Permit (SWFP) for the Newby Island Sanitary Landfill (NISL), SWIS No. 43-AN-0003, located in the City of San Jose and owned and operated by International Disposal Corporation, Inc. A copy of the proposed permit is attached. This report contains Permitting & Assistance Branch staff's analysis, findings, and recommendations.

The proposed permit was received on December 9, 2014. Action must be taken on this permit no later than February 7, 2015. If no action is taken by February 7, 2015, the Department will be deemed to have concurred with the issuance of the proposed revised SWFP.

Proposed Changes

The following changes to the first page of the permit are being proposed:

	Current Permit (1997)	Proposed Permit
Design Capacity	50.8 Million Cubic Yards	57.5 Million Cubic Yards
Maximum Elevation	150 Feet Above Mean Sea Level	245 Feet Above Mean Sea Level
Estimated Closure Date	2025	2041
Permitted Disposal Area	308 acres	298 acres
Permitted Traffic Volume	Equivalent of 4,000 Tons per Day	1,269 waste vehicles per day (does not include employees, visitors, vendors, regulatory personnel)

Other Changes include:

1. A reformat of the SWFP "Key Design Parameters" table to eliminate solid waste handling activities that are not applicable to this proposed permit.
2. Updates to the "Enforcement Agency Address" to reflect the new address of 200 East Santa Clara Street, T4. San Jose, CA 95113.
3. Updates to section 12 of the SWFP (Legal Description of Facility) to reflect the correct Assessor's Parcel Numbers (APN) 015-40-003, 015-40-005, and 015-47-001.

4. Updates to section 13 of the SWFP (Findings) to identify the applicable Environmental Document prepared for the proposed changes.
5. Updates to section 15 of the SWFP (documents that describe and/or restrict the operation of the facility). Updated documents include; Joint Technical Document (JTD), Environmental Impact Report (EIR), Financial Assurance documentation, and Closure and Postclosure Maintenance Plan.
6. Updated permit conditions correcting outdated language and inclusion of additional conditions and specifications relative to permitted maximum daily tonnage, permitted traffic volume, material storage limits, load checking and waste cover frequency.

Key Issues

The proposed permit will allow for the following:

1. An increase in maximum elevation from 150 feet above mean sea level (AMSL) to 245 feet AMSL.
2. An increase in design capacity from 50.8 million cubic yards to 57.5 million cubic yards.
3. A decrease in permitted disposal area from 308 acres to 298 acres.
4. An extension of the estimated closure date from 2025 to 2041.

Background

The NISL is an existing Solid Waste Disposal Facility situated on a 342 acre site at 1601 Dixon Landing Road, City of San Jose, Santa Clara County. NISL has been used as a landfill since the 1930's and was annexed into the City of San Jose as an operating landfill in 1968. The SWFP, which was issued on March 14, 1997, allows for a maximum receipt of 4,000 tons per day (TPD) of waste disposed and an equivalent of 4,000 TPD maximum traffic volume. Materials that pass through the gate of NISL include waste that is disposed in the landfill; clean soil that is used for cover and for temporary roadways; construction and demolition (C&D) debris that is sorted, recycled, and processed for re-use both on-site and elsewhere; and materials that are used for alternative daily cover (ADC), which include but are not limited to biosolids, processed C&D debris, contaminated soil, green waste, and organic material from the on-site composting operations. In addition to C&D waste, bulky recyclables including appliances, tires, carpet, and cardboard are sent to NISL and either are recycled or diverted for beneficial use. Incoming organics received at the landfill are processed (*i.e.*, ground) and utilized as mulch for erosion control on-site and alternative daily cover or are sent off-site to be used as biofuel, for erosion control, or as a soil additive.

Findings:

Staff recommends concurrence in the issuance of the proposed revised SWFP. All of the required submittals and findings required by Title 27 of the California Code of Regulations (27 CCR), Section 21685, have been provided and made. Staff has determined that the California Environmental Quality Act (CEQA) requirements have been met to support concurrence. The findings that are required to be made by the

Department when reaching a determination are summarized in the following table. The documents on which staff's findings are based have been provided to the Branch Chief with this Staff Report and are permanently maintained by the Waste Permitting, Compliance, and Mitigation Division.

27 CCR Sections	Findings	
21685(b)(1) LEA Certified Complete and Correct Report of Facility Information	The LEA provided the required certification in their permit submittal letter dated November 14, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(2) LEA Five Year Permit Review	A Permit Review Report was prepared by the LEA on November 15, 2011. The LEA provided a copy to the Department on December 8, 2014. The changes identified in the review are reflected in this permit revision.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(3) Solid Waste Facility Permit	Staff received proposed Solid Waste Facilities Permit on December 9, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685 (b)(4)(A) Consistency with Public Resources Code 50001	The LEA in their permit submittal package received on December 8, 2014, provided a finding that the facility is consistent with PRC 50001. Waste Evaluation & Enforcement Branch (WEEB) staff in the Jurisdiction Compliance Unit found the facility is identified in the <i>Countywide Siting Element</i> , as described in their memorandum dated December 23, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(5) Preliminary or Final Closure Plan Consistency with State Minimum Standards	Engineering Support Branch staff in the Closure and Facility Engineering Unit have found the Preliminary Closure/Postclosure Maintenance Plan consistent with State Minimum Standards as described in their memorandum dated May 22, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(6) Known or Reasonably Foreseeable Corrective Action Cost Estimate	Engineering Support Branch staff in the Closure and Facility Engineering Unit have found the written estimate to cover the cost of known or reasonable foreseeable corrective action is approved as described in their memorandum dated April 28, 2014.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(7)(A) Financial Assurances	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Financial Assurances for closure, postclosure and corrective action in compliance as described in memorandum dated January 9, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

27 CCR Sections	Findings	
21685(b)(8) Operating Liability Insurance	Permitting and Assistance Branch staff in the Financial Assurances Unit found the Operating Liability in compliance as described in their memorandum dated January 9, 2015.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(8) Operations Consistent with State Minimum Standards	WEEB staff in the Inspections and Enforcement Agency Compliance Unit found that the facility was in compliance with all operating and design requirements during an inspection conducted on December 9, 2014. See Compliance History below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21685(b)(9) LEA CEQA Finding	The LEA provided a finding in their permit submittal package received on December 8, 2014, that the proposed permit is consistent with and supported by the existing CEQA documentation. See the Environmental Analysis below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
21650(g)(5) Public Notice and/or Meeting, Comments	A Public Informational Meeting was held by the LEA on November 6, 2014. Written comments and oral comments were addressed by LEA staff. See Public Comments section below for details.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable
CEQA Determination to Support Responsible Agency's Findings	The Department is a responsible agency under CEQA with respect to this project. Permitting and Assistance Branch staff has determined that the CEQA record can be used to support the Branch Chief's action on the proposed revised SWFP.	<input checked="" type="checkbox"/> Acceptable <input type="checkbox"/> Unacceptable

Compliance History:

WEEB staff in the Inspections and Enforcement Agency Compliance Unit conducted a pre-permit inspection on November 25, 2014, and found that the facility was not in compliance with all applicable state minimum standards and permit conditions.

The following violations were issued on the Department focused inspection report dated November 25, 2014:

- Title 27 CCR, section 21600-Report of Disposal Site Information – The facility was storing unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery at the compost facility, located within the permitted boundary of the NISL. On the day of the inspection, Department staff observed unprocessed mixed recyclables and organic material stored in a 100'x100'x6' concrete bunker located near the active tipping area of the landfill. This material was not weighed in or tracked for storage at the landfill or compost facility. The current JTD does not describe the transfer and storage of mixed recyclables and organic material inside of a bunker at the NISL.

Additionally, Department staff was informed that the operator harvests cover material [soil and ADC] from the active face and blends and uses ADC materials comprised of ground-up green/wood material, C&D fines, and biosolids. At the time of inspection, Department staff observed a stockpile near the active face of blended ADC comprised of processed green/wood material, biosolids and C&D fines. Also, Department staff observed a small amount of blended ADC applied near the active face from the previous operating day. Department staff did not observe the application of the blended ADC on the day of the inspection. The operator is currently approved to separately use all three materials (green/wood material, C&D fines, and biosolids) as ADC. The current governing JTD for the NISL does not have provisions for harvesting cover material from the active face or the use of the blended materials as ADC. Therefore, these practices shall be discontinued immediately until the LEA approves the activities pursuant to 27 CCR, section 20690.

- Title 27 CCR, section 20510-Disposal Site Records – The facility was storing unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery at the compost facility located within the permitted boundary of the NISL. This material was not weighed in or tracked for storage at the landfill or compost facility. All material/tonnage that comes into or leaves the landfill should be properly weighed and tracked by the landfill. The material that was temporarily stored at the landfill was only weighed and tracked through the adjacent BFI/Newby Island Recyclery, which is also owned and operated by Republic Services.

Staff performed a follow-up inspection on December 9, 2014 and found that the violations observed on November 25, 2014, had been corrected. The storage of unprocessed mixed recyclables and organic material from the BFI/Newby Island Recyclery and the harvesting of cover material and use of unapproved, blended ADC materials has been discontinued.

Below are the details of the landfill's compliance history based on the LEA's monthly inspection reports during the last five years:

- 2012-2014 No violations noted.
- 2011 (January) – One violation of Title 27 CCR, section 20921 – Gas Monitoring and Control due to monitoring wells having a methane gas concentration reading exceed five percent by volume in air.
- 2010 (July, October, November, December) – Four violations of Title 27 CCR, section 20921 – Gas Monitoring and Control due to monitoring wells having a methane gas concentration reading exceed five percent by volume in air.

All violations were corrected to the satisfaction of the LEA. Further detail with regard to compliance with 27 CCR, Section 20921 is provided in the Public Comments section below.

Issues regarding odors were discussed with Bay Area Air Quality Management District staff. Department staff understand that the District staff have issued two Notice of Violations on January 6, 2015 for nine odor complaints confirmed in December 2014. The Notices were issued to NISL for failing to comply with Regulation 1, Section 301, which states that the facility may not discharge any air contaminants or other materials that may cause public nuisance.

Environmental Analysis:

Under CEQA, the Department must consider, and avoid or substantially lessen where possible, any potentially significant environmental impacts of the proposed revised SWFP before the Department concurs in it. In this case, the Department is a Responsible Agency under CEQA and must utilize the environmental document prepared by the City of San Jose, Department of Planning, Building, and Code Enforcement, acting as Lead Agency, absent changes in the project or the circumstances under which it will be carried out that justify the preparation of additional environmental documents and absent significant new information about the project, its impacts and the mitigation measures imposed on it.

The changes that will be authorized by the issuance of the proposed permit include:

1. An increase in maximum elevation from 150 feet mean sea level to 245 feet mean sea level.
2. An increase in design capacity from 50.8 million cubic yards to 57.5 million cubic yards.
3. An extension of the estimated closure date from 2025 to 2041.
4. A decrease in permitted disposal area from 308 acres to 298 acres.

The proposed changes are supported by the following environmental document:

- Draft Environmental Impact Report (EIR) and First Amendment to the Draft EIR, State Clearinghouse No. 2007122011, dated May 2012.

A Draft Environmental Impact Report (EIR), State Clearinghouse No. 2007122011, was circulated for a 45 day comment period from September 22, 2009 to November 5, 2009. This Draft EIR analyzed the following proposed changes:

- Allowance of the maximum height of the active portion of the landfill to be raised to 245 feet on the National Geologic Vertical Datum of 1929 (NGVD29).
- Adding approximately 15.12 million cubic yards to the capacity of the landfill.
- Allow indefinite landfill use as long as capacity remains at the landfill.

The lead agency received numerous comments on the Draft EIR. Working with its environmental consultants, David Powers and Associates, the lead agency prepared responses to all those comments that raised environmental issues. The responses describe the disposition of significant environmental issues raised by the comments and make changes and additions to the Draft EIR in response to those comments. The

comments, responses to comments, resulting changes to the Draft EIR and additional information are all included in a First Amendment to the Draft EIR which was completed and made available to the public on May 24, 2012. The First Amendment, taken together with the Draft EIR, constitutes the Final EIR. The Final EIR was certified by the City of San Jose Planning Commission on June 6, 2012. The City of Milpitas challenged the EIR in Santa Clara County Superior Court, which upheld the EIR. The City of Milpitas has filed an appeal of that decision. However, the EIR remains effective until a court orders otherwise and as such, CalRecycle, as a responsible agency under CEQA, is required by law to utilize the EIR as it stands and is not permitted to second guess the analysis and conclusions in that document.

The City of San Jose LEA has provided a finding that the proposed revised SWFP is consistent with and supported by the cited environmental document.

Staff recommends that the Department, acting as a Responsible Agency under CEQA, utilize the Final Environmental Impact Report, as prepared by the Lead Agency in that there are no grounds under CEQA for the Department to prepare a subsequent or supplemental environmental document or assume the role of Lead Agency for its consideration of the proposed revised SWFP.

The administrative record for the decision to be made by the Department includes the administrative record before the LEA, the proposed revised SWFP and all of its components and supporting documentation, this staff report, the Final Environmental Impact Report certified by the Lead Agency, and other documents and materials utilized by the Department in reaching its decision on concurrence in, or objection to, the proposed revised SWFP. The custodian of the Department's administrative record is Dona Sturgess, Legal Office, Department of Resources Recycling and Recovery, P.O. Box 4025, Sacramento, CA 95812-4025.

Public Comments:

The project document availability, hearings, and associated meetings were noticed consistent with the SWFP requirements. The LEA held a public informational meeting on November 6, 2014, at the Embassy Suites, located at 901 E Calaveras Blvd., in the City of Milpitas.

Department staff attended the meeting. The following is staff's summary of the meeting:

The meeting lasted two hours and was attended by approximately 65 people. The meeting began with an operator presentation of the proposed project. The remaining time was allotted for public comment. Approximately half of the attendees offered comments and the majority of which were related to complaints of bad odor. One comment was made regarding the proposed maximum height of the landfill and one comment was made regarding potential health impacts from the landfill including environmentally induced asthma. During the public informational meeting, Department staff received a letter from Thomas C. Williams, Manager of the City of Milpitas, addressed to the LEA and the Department, regarding the proposed revised SWFP, Joint

Technical Document (JTD), and permit application for the NISL. In the letter, dated November 6, 2014, Mr. Williams provides a list of reasons opposing the proposed revised SWFP.

Prior to submitting the proposed permit to the Department, the LEA received approximately 70 written comments in opposition of the project. As of January 29, 2015, the Department has received over 250 written comments and phone calls in opposition of the proposed revised SWFP. All of the written and oral comments received by the Department were replied to via e-mail or phone call, respectively. Written comments are posted on the Department's public website.

Department staff provided an opportunity for public comment during the Department's Monthly Public Meeting held on December 16, 2014 and January 27, 2015.

At the December 16, 2014 meeting, 39 members of the public were in attendance to provide oral comments. One NISL representative spoke.

At the January 27, 2015 meeting, 29 members of the public provided oral comments in opposition to the project. One NISL representative provided remarks.

Below is a summary of the written and oral public comments received for the proposed project during the proposed revised SWFP process and the Department Monthly Public Meetings followed by Department staff's response to those comments:

Comments: Written and oral comments were received from concerned members of the public almost exclusively regarding odor and air quality issues.

Response: The Department is prohibited under California law from regulating or enforcing odor standards at landfills. Assembly Bill 1220, known as the "Solid Waste Disposal Regulatory Reform Act of 1993," (Public Resources Code (PRC) Sections 43100 et seq.) was designed to eliminate regulatory overlap, conflict, and duplication between state agencies and state and local agencies. The Act specified that: "A clear and concise division of authority shall be maintained in both statute and regulation to remove all areas of overlap, duplication, and conflict between the board and the state water board and regional water boards, or between the board and any other state agency..." (PRC 43101(c)(1)).

The Act further revised the Integrated Waste Management Board's (now the Department's) regulatory authority to expressly remove its authority to promulgate standards that were within the jurisdiction of the Air Board and Air Districts. Specifically, PRC 43020 states that the Department "shall not include [in its regulations] any requirements that are already under the authority of the State Air Resources Board for the prevention of air pollution or of the state water board for the prevention of water pollution." Moreover, PRC 43021 states that the Department's regulations "shall not include aspects of solid waste handling or disposal which are solely of local concern or

which are within the jurisdiction of the State Air Resources Board, air pollution control districts and air quality management districts...”

Odor is defined under in those sections of the Health and Safety Code (HSC) under Air Board jurisdiction as a type of air contaminant (HSC 39013).¹ HSC 41700² states that prevention of the discharge of air contaminants is within the jurisdiction and authority of the Air Boards and Air Districts and therefore, the Department is prohibited from promulgating regulations and standards regarding the control of odors at solid waste facilities (with the exception of agricultural operations and compost facilities for which the Department has been given express authority in HSC 41705³ and PRC 43209.1⁴).

Some comments have cited to a section in 27 CCR regarding ADC that uses the word “odor” and conclude that the Department therefore has associated regulatory authority to address this issue. However, this section must be read in context with other

¹ "Air contaminant" or "air pollutant" means any discharge, release, or other propagation into the atmosphere and includes, but is not limited to, smoke, charred paper, dust, soot, grime, carbon, fumes, gases, odors, particulate matter, acids, or any combination thereof.

² (a) Except as otherwise provided in Section 41705, a person shall not discharge from any source whatsoever quantities of air contaminants or other material that cause injury, detriment, nuisance, or annoyance to any considerable number of persons or to the public, or that endanger the comfort, repose, health, or safety of any of those persons or the public, or that cause, or have a natural tendency to cause, injury or damage to business or property. (b) (1) A district may adopt a rule or regulation, consistent with protecting the public's comfort, repose, health, and safety, and not causing injury, detriment, nuisance, or annoyance, that ensures district staff and resources are not used to investigate complaints determined to be repeated and unsubstantiated, alleging a nuisance odor violation of subdivision (a). (2) If a district adopts a rule or regulation pursuant to paragraph (1), the district shall submit the rule or regulation to the Senate Committee on Environmental Quality and the Assembly Committee on Natural Resources within 30 days of adopting the rule or regulation. (c) This section shall remain in effect only until January 1, 2014, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2014, deletes or extends that date.

³ (a) Section 41700 does not apply to odors emanating from any of the following: (1) Agricultural operations necessary for the growing of crops or the raising of fowl or animals. (2) Operations that produce, manufacture, or handle compost, as defined in Section 40116 of the Public Resources Code, if the odors emanate directly from the compost facility or operations. (3) Operations that compost green material or animal waste products derived from agricultural operations, and that return similar amounts of the compost produced to that same agricultural operations source, or to an agricultural operations source owned or leased by the owner, parent company, or subsidiary conducting the composting operation. The composting operation may produce an incidental amount of compost not exceeding 2,500 cubic yards of compost, which may be given away or sold annually. (b) If a district receives a complaint pertaining to an odor emanating from a compost operation exempt from Section 41700 pursuant to paragraph (2) or (3) of subdivision (a), that is subject to the jurisdiction of an enforcement agency under Division 30 (commencing with Section 40000) of the Public Resources Code, the district shall, within 24 hours or by the next working day, refer the complaint to the enforcement agency. (c) This section shall become inoperative on April 1, 2003, unless the California Integrated Waste Management Board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) of Section 43209.1 of the Public Resources Code on or prior to that date.

⁴ (a) Notwithstanding any other provision of law, if an enforcement agency receives a complaint, pursuant to subdivision (b) of Section 41705 of the Health and Safety Code, from an air pollution control district or an air quality management district pertaining to an odor emanating from a compost facility under its jurisdiction, the enforcement agency shall, in consultation with the district, take appropriate enforcement actions pursuant to this part. (b) On or before April 1, 1998, the board shall convene a working group consisting of enforcement agencies and air pollution control districts and air quality management districts to assist in the implementation of this section and Section 41705 of the Health and Safety Code. On or before April 1, 1999, the board and the working group shall develop recommendations on odor measurement and thresholds, complaint response procedures, and enforcement tools and take any other action necessary to ensure that enforcement agencies respond in a timely and effective manner to complaints of odors emanating from composting facilities. On or before January 1, 2000, the board shall implement the recommendations of the working group that the board determines to be appropriate. (c) On or before April 1, 2003, the board shall adopt and submit to the Office of Administrative Law, pursuant to Section 11346.2 of the Government Code, regulations governing the operation of organic composting sites that include, but are not limited to, any of the following: (1) Odor management and threshold levels. (2) Complaint investigation and response procedures. (3) Enforcement tools. (d) This section shall become inoperative on April 1, 2003, unless the board adopts and submits regulations governing the operation of organic composting sites to the Office of Administrative Law pursuant to subdivision (c) on or prior to that date.

applicable laws. The Administrative Procedure Act provides that a state agency may not adopt a regulation that alters, amends or enlarges the scope of the power conferred upon it. Therefore, any CalRecycle regulation must be read in concert with the statutes that provide its regulatory authority.

Based upon the statutes cited above, CalRecycle has no authority to adopt standards to control odors from landfills because that is within the jurisdiction of the Air Board and Districts. One of the purposes of cover (including ADC) is to prevent odors and so that term was included in the Department's regulations to ensure an accurate description of what cover is designed to accomplish, but in doing so, the Department was not establishing a standard that it could enforce because that would be enlarging the scope of the power conferred on it. The Initial Statement of Reasons for this regulatory section in fact states this, expressly noting that, "Odor issues at solid waste landfills are the jurisdiction of the State Air Resources Board and air pollution control districts or air quality management district." Likewise, in response to a comment during the rulemaking for these regulations stating that Enforcement Agencies should have ADC odor enforcement authority and an ADC odor performance standard, the Integrated Waste Management Board (now the Department) responded that "the local air districts have jurisdiction as per AB 1220."

Comments: Written and oral public comments were received regarding concerns with the increase in maximum elevation to the NISL.

Response: Impacts from landfill height are analyzed in the EIR and no significant impacts associated with the height increase were found.

CalRecycle staff reviewed the slope stability analyses as part of the review of the preliminary closure and postclosure maintenance plans for the proposed expansion. The geotechnical report indicated that the landfill is stable and meets regulatory requirements under both static and dynamic conditions, including locations where liquefaction may occur during a seismic event. The geotechnical report included recommendations to address the potential for liquefaction. The operator has begun implementation and continues to implement the measures to reduce the potential threat of liquefaction.

Comments: Written and oral public comments were received claiming that the CEQA for the project is inadequate.

Response: As detailed in the Environmental Analysis section above, Department staff has reviewed the environmental documentation and has determined that the Final EIR, as prepared by the Lead Agency, is adequate for the Department's environmental evaluation of the proposed project for those project activities which are within the Department's expertise and/or powers, or which are required to be carried out or approved by the Department. In addition, under the circumstances, the Department must use the Lead Agency's CEQA documents since the Department has no authority

to prepare a subsequent or supplemental environmental document, pursuant to 14 CCR, Sections 15162 and 15163 respectively, or assume the role of Lead Agency, pursuant to 14 CCR, Section 15052, for its consideration of the proposed revised SWFP. None of the comments provided any substantial evidence to support an alternate conclusion. Although the EIR has been challenged in court, it remains effective until a court says otherwise and the Department, as a CEQA responsible agency, is required by law to follow it.

Comments: Written and oral public comments were received claiming that the NISL is causing a nuisance to the surrounding community as a result of the odors and that the LEA and Department have authority to enforce nuisance requirements.

Response: While these comments correctly note that the LEA and Department have authority in regulation to address nuisance issues, to the extent a nuisance is caused by odor, the regulations must be read within the proper context as described above in the “Odor” section. The authority to enforce nuisance is limited by the fact that the LEA and Department are prohibited by law from regulating landfill odor. The nuisance regulation cannot be interpreted to grant authority that a statute explicitly denies.

Comments: Written comments were received indicating that the application for the permit revision and the proposed revised SWFP are inadequate. Specific comments focus on the suggested changes to the proposed permit’s key design parameters, the mitigating monitoring and reporting program, the terms and conditions of the SWFP, and a lack of local land use requirements in the SWFP. Some commenters stated that the proposed revised SWFP was inadequate since the SWFP did not identify requirements and/or limitations imposed by a local land use permit.

Response: Department staff has made the determination that all of the required submittals and findings required by 27 CCR, Section 21685, have been provided. An LEA is responsible for permitting solid waste handling activities within their jurisdiction as provided in PRC, Section 44001 et. seq (permitting requirements). The LEA’s authority is limited by statutes and regulations under the Integrated Waste Management Act, Division 30 of the PRC, 27 CCR, and 14 CCR. The LEA and Department do not have authority to enforce local land use requirements and permits or other requirements imposed by another agency. Furthermore, the LEA is only responsible for any specific mitigation monitoring and reporting program requirements which are within their powers and authority as the LEA under the Integrated Waste Management Act. All of the mitigation measures within the authority of the LEA are enforced through the proposed permit.

Comments: Written comments were received indicating that the JTD is incomplete for the purposes of the proposed revised SWFP and include suggested changes to the JTD.

Response: Department staff has made the determination that all of the required submittals and findings required by 27 CCR, Section 21685, including the JTD.

Landfill Gas Monitoring

Comments: Written and oral public comments were received with regard to the violations of 27 CCR, section 20921 – Gas Monitoring and Control, and NISL's compliance status with this regulation.

Response: NISL had at one time a perimeter landfill gas monitoring network consisting of 20 wells with monitoring probes. Because NISL is surrounded by tidal marshlands, sloughs, and creeks that are inaccessible for well construction and monitoring, 17 of the wells were constructed along a levy road directly abutting the landfill. Due to measurements in some of the monitoring probes exceeding the regulatory limit for methane, a landfill gas remediation plan was approved for the NISL in July 2010. They included 22 new vertical gas extraction wells installed along the northern boundary of the facility. In 2011, NISL proposed an alternative monitoring program that recognized the effects of a naturally occurring barrier system to landfill gas migration created by shallow groundwater, surface water, and tidal marshlands surrounding the site. The barrier prohibits the subsurface migration of landfill gas and there was no potential for the creation of adverse impacts to public health and safety and the environment by discontinuing compliance monitoring in location adjacent to the barrier. Under the alternative plan, three monitoring wells along the southeast D-shaped parcel in proximity to the operations buildings and scales are monitored for regulatory compliance. The monitoring wells in other areas along the perimeter of the NISL are not required to be monitored for regulatory compliance, but continue to be monitored for safety and to verify the performance of the landfill gas control system. The revised monitoring plan was approved by the LEA and the Department concurred in that determination in 2011. All previously noted violations were corrected to the satisfaction of the LEA. Since January 2011, NISL has not received a violation of 27 CCR, Section 20921.

A petition, entitled "Stop Newby Island Landfill Expansion--garbage can't be put above people!" was posted on the Change.org website. As of January 29, 2015 the petition has been "signed" by 15,655 individuals.